MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2016/2017

UCL3612 – COMPANY LAW I

(All Sections / Groups)

18 OCTOBER 2016
Reading Time : 2.30 p.m. – 2.45 p.m.
(15 Minutes)
Answering Time: 2.45 p.m. – 5.45 p.m.
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 4 pages with 4 Questions only.

3. Answer **ALL** questions in PART A and **ONE (1)** question in PART B. All questions carry equal marks and the distribution of the marks for each question is given.

4. Students are allowed to bring into Examination Hall CLEAN and ORIGINAL copy of Companies Act 1965.

   Students are not allowed to lend or borrow statute(s) during the Examination.

5. Please write all your answers in the Answer Booklet provided.

PART A : Answer ALL questions.

QUESTION 1

Westferry Sdn. Bhd. ("WSB") is a private limited company registered with the Companies Commission of Malaysia on 2 October 2012. Ms. Lambeth, the promoter of WSB had purchased a piece of land on behalf of WSB in August 2012 from her fiancé, Mr. Surrey and entered into a sale and purchase agreement with Mr. Surrey in the name of WSB. The relationship between Ms. Lambeth and Mr. Surrey was disclosed to WSB and the contract was then ratified by WSB after its incorporation. In July 2013, WSB engaged contractors to perform architectural designs, construction work and landscaping to develop the land into commercial area. However, two years later, WSB found out that Ms. Lambeth had made some profit from the sale and purchase agreement with Mr. Surrey and wish to rescind the contract.

Advise the parties.

(Total: 25 marks)

QUESTION 2

> **"Any matter not expressly or impliedly authorised by a company's object clause would be one which would be beyond the capacity of the company or ultra vires……" House of Lord in the case of *Ashbury Railway Carriage and Iron Co v Riche* [1875] LR 7 HL 653 (emphasis added)**

In light of the above judgment, compare and contrast the development and application of *doctrine of ultra vires* both in England and in Malaysia.

(Total: 25 marks)

Continued …….

QUESTION 3

Kew, Heath and Vaux are directors of Clapham Berhad (CB), a Malaysian-based multinational conglomerate involved in plantations, energy and utilities.

To expand the company's business, CB had secured a loan of RM50 million from Battersea Bank Berhad (BBB) for the development of a land recently bought by CB into a commercial area. It has since been discovered that the land was bought way above market value from Kew's son.

In developing this land, CB will award the contract to Ealing Sdn. Bhd. (ESB) as the main developer, whose only shareholders are Heath and Vaux. Heath intends to resign from CB to avoid from being sued for breach of his duty to CB. From an inspection made, it appears that, because the land is situated too near to the high power electrical transmission tower, CB may not make a profitable development of the land and high probability, huge losses may be incurred due to this.

Two months ago, Kew and Heath had diverted RM2 million from the loan and invested it into a get-rich-quick scheme as they honestly believed that their action is in the best interest of the company. It has recently been discovered that Bank Negara is currently investigating the scheme on suspicion for illegal multi-level scheme offence.

Advise Kew, Heath and Vaux on their possible liabilities and consequences.

(Total: 25 marks)

Continued .....

PART B

Answer Question A **OR** B.

QUESTION 4

A. Ali set up Juta Jaya Sdn. Bhd. (JJSB), a private limited company whose shareholders comprised of Ali who owned 80 percent of share and the balance of 20 percent of shares are equally held by Ali's wives, Sally and Bibi. Thereafter, Ali also set up Billion Jaya Sdn. Bhd. (BJSB) as a subsidiary of JJSB. JJSB, Ali and Halim are the shareholders of BJSB at 70, 20 and 10 percent respectively.

In 2015, BJSB defaulted in the repayment of loan obtained from Tiger Bank (TB). The loan was authorized by Ali, being the managing director of BJSB. As a holding company, JJSB issued a letter of undertaking to TB promising to pledge BJSB's shares and all its assets within 21 days in favour of TB to secure the repayment of the loan. Upon lapse of the promised 21 days, TB sought to enforce the undertaking against BJSB and Ali.

Having predicted TB's subsequent action, BJSB had immediately effected the transfer of all its assets and properties to JJSB and Ali's newly set up company; Jugra Sdn. Bhd. (JSB). The transfer was inclusive of one (1) unit of a bungalow house which was the subject matter of a sale and purchase agreement entered into between BJSB and Adi Raman. In consequence to this, Adi Raman filed a claim for breach of contract against Ali, Halim, Sally and Bibi being the owner of BJSB and JJSB respectively.

Halim, who was afraid that he might go into bankruptcy due to BJSB's condition, decided to sue Ali for poor management of the company.

BJSB later went into liquidation and all its employees were retrenched. The employees filed a claim against JJSB claiming that they were being unfairly dismissed by JJSB being the holding company of BJSB.

Advise the parties.

(Total: 25 marks)

Continued .....

B.

> **'... Whatever may be the exact scope of the rule in *Turquand's* case, I think it is quite clear on principle and on the authorities I have already referred to that it can never be relied upon by a person who is put on inquiry. The rule proceeds on a presumption that certain acts have been regularly done, and if the circumstances are such that the person claiming the benefit of the rule is really put on inquiry, if there are circumstances which debar that person from relying on the prima facie presumption, then it is clear, I think, that he cannot claim the benefit of the rule...."**
>
> **– Wright J in *B Liggett (Liverpool) Ltd v Barclays Bank Ltd* [1928] 1 KB 48 at pp 56-56**

Explain the rule in *Turquand*'s case and the scope for its application.

(Total: 25 marks)

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